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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/737,340	12/16/2003	Thomas J. Dinger	LOT920030059US1	6138
23550 7590 10/03/2008 HOFFMAN WARNICK LLC 75 STATE STREET 14TH FLOOR ALBANY, NY 12207				
EXAMINER				
HOANG, HIEU T				
ART UNIT		PAPER NUMBER		
2152				
NOTIFICATION DATE		DELIVERY MODE		
10/03/2008		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PTOCommunications@hoffmanwarnick.com

### Office Action Summary

**Application No.**

10/737,340

**Applicant(s)**

DINGER ET AL.

**Examiner**

HIEU T. HOANG

**Art Unit**

2152

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 September 2008.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 16-22 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 16-22 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 12/16/2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO/5508)  
Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. This office action is in response to the communication filed on 9/12/2008.
2. Claims 16-22 are presented for examination.

### ***Response to Arguments***

3. Applicant's arguments have been fully considered but they are moot in view of new ground of rejection.

### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 16-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Consider independent claim 16, the claim recites "the applicable content server is determined based on a geographic proximity of a student" on lines 8-9. First, "the applicable content server" lacks antecedent basis and is vague for what is meant by an *applicable content server*. Second, *geographic proximity of a student* is vague. Does it mean proximity of a student to the applicable content server or to something else? Correction is required.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 16, 19-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alcorn et al. (US 2004/0153509, hereafter Alcorn), in view of Bjornestad et al. (US 7,003,576, hereafter Bjornestad), further in view of Parker (US 2003/0207245) and Rozen (US 2002/0091760).

8. For claim 16, Alcorn discloses computerized learning management method, comprising:

- creating educational content using an authoring module (fig. 1C, [0145], [0150], content engine providing step-by-step instructions for an instructor for building a course);
- communicating the educational content created with the authoring module to a learning management server that manages an on-line learning environment and communicating the educational content from the learning management server to a set of content servers (fig. 1C, [0141], server 161 for managing educational content created with the content engines) and provides the educational content

to a set of content servers, the set of content servers is physically separate from the authoring module and the learning management server (fig. 1C, fig. 2, [0160], [0161], set of web server hosts 130 or content servers can be used for load balancing educational content to clients);

- delivering a set of interface pages corresponding to the on-line learning environment to students from a set of delivery servers, where the set of interfaces pages displays possible selections of educational content that are available to the students, delivering the educational content to the students from the set of content servers based on requests made by the students using the set of interface pages, the set of delivery servers are physically separate from the authoring module, the learning management server (fig. 1C, 2, [0160], [0161], [0169], students request to receive course content and the course content is delivered to students' browsers through web server hosts 130—delivery servers--from server 161);

Alcorn does not disclose that the learning management server is physically separate from the authoring module.

However, Bjornestad discloses the same (fig. 2, step 1, content developer module for creating or authoring content is separate from the learning management server LMS which receives and stores authored content from the content developer)

Therefore, it would have been obvious for one skilled in the art at the time of the invention to combine the teachings of Alcorn and Bjornestad to implement separate

learning management server and authoring module to allow external content developers to use the learning management server (Bjornestad, col. 4 l. 44-67).

Alcorn-Bjornestad does not disclose wherein the set of delivery servers are physically separate from the set of content servers.

However, Parker discloses web servers for delivering and communicating end user's requests to application servers ([0021], [0076], web servers are delivery servers for providing information to users, web servers separate from application servers or content servers)

Therefore, it would have been obvious for one skilled in the art at the time of the invention to combine the teachings of Alcorn, Bjornestad and Parker to implement a scalable e-learning system wherein functional servers are separate from one another.

Alcorn-Bjornestad-Parker does not disclose wherein the applicable content server is determined based on a geographic proximity of a student.

However, Rozen discloses determining a content server that is physically closest to the client from a plurality of content servers (abstract, [0005], [0010])

It would have been obvious for one skilled in the art at the time of the invention to combine the teachings of Alcorn, Bjornestad, Parker and Rozen to serve a client from a closest content server in order to minimize the likelihood of encountering network congestion (Rozen, [0005])

9. For claim 19, the claim is rejected as in claim 16. Alcorn-Bjornestad-Parker-Rozen further discloses the creating educational content comprises interacting with the authoring module from a client (Alcorn, fig. 48-50, authoring with a browser).

10. For claim 20, the claim is rejected as in claim 16. Alcorn-Bjornestad-Parker-Rozen further discloses the set of interface pages are delivered to browsers operated by the students (Alcorn, fig. 5-37, student browsers for displaying pages).

11. For claim 21, the claim is rejected as in claim 16. Alcorn-Bjornestad-Parker-Rozen further discloses storing the educational content in a content storage module prior to communicating the educational content to the learning management server (Alcorn, fig. 1C, database and persistence 140, [0037], [0045], a server for storing content generated by authoring tool).

12. For claim 22, the claim is rejected as in claim 16. Alcorn-Bjornestad-Parker-Rozen further discloses transmitting notifications to the students and instructors from the learning management server (Alcorn, [0242], logs for system tuning, troubleshooting, tracking matters).

13. Claims 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alcorn-Bjornestad-Parker-Rozen, further in view of what has been known in the art (Official notice or ON).

14. For claim 17, the claim is rejected as in claim 16. Alcorn-Bjornestad-Parker-Rozen further discloses communicating performance data generated by the students based on the educational content to the set of delivery servers ([0173], student performance data such as quiz answers are returned to the web servers), from the set of delivery servers to the learning management server for analysis (Alcorn, [0173], student answers are returned to the educational management server to be graded). Alcorn-Bjornestad-Parker does not explicitly disclose sending at a predefined interval.

Official Notice is taken that returning or sending at a predefined interval is well known in the art (See e.g., Kinebuchi et al., US 2003/0074448, [0040], periodical sending content)

It would have been obvious for one skilled in the art at the time of the invention to combine the teachings of Alcorn, Bjornestad, Parker, Rozen and what has been known in the art to periodically sending content so that network connections or resources are not occupied all the time.

15. For claim 18, the claim is rejected as in claim 16. Alcorn-Bjornestad-Parker-Rozen further discloses delivering learning sessions to the students based on the requests issued by the students using the interface pages from a set of session servers (Alcorn, [0205], [0206], Parker, fig. 1, media servers for streaming). Alcorn-Bjornestad-Parker-Rozen does not explicitly disclose that the learning sessions are live.



Official Notice is taken that live learning session is well known in the art (See e.g., Cinghita et al., US 2003/0093548, [0022], live learning sessions)

It would have been obvious for one skilled in the art at the time of the invention to combine the teachings of Alcorn, Bjornestad, Parker, Rozen and what has been known in the art to implement live contents delivering instead of just playback contents.

### ***Conclusion***

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure is included in form PTO 392.

17. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hieu T. Hoang whose telephone number is 571-270-1253. The examiner can normally be reached on Monday-Thursday, 8 a.m.-5 p.m., EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bunjob Jaroenchonwanit can be reached on 571-272-3913. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

HH

/Bunjob Jaroenchonwanit/

Supervisory Patent Examiner, Art Unit 2152